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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/089,871 06/04/98 BARENDSE

R 97253-A

EXAMINER

020306 HM12/0411
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TUNG, P

ART UNIT

PAPER NUMBER

1652

DATE MAILED:

04/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory ActionApplication No.
09/089,871Applicant(s)
Barendse et al.Examiner
Peter TungGroup Art Unit
1652**THE PERIOD FOR RESPONSE: [check only a) or b)]**

- a) ☒ expires 6 months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Oct 24, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☒ The proposed amendment(s):

- ☒ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☐ will not be entered because:
- ☐ they raise new issues that would require further consideration and/or search. (See note below).
 - ☐ they raise the issue of new matter. (See note below).
 - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

☒ Applicant's response has overcome the following rejection(s):

Rejection of claim 18 under 35 U.S.C. 112, 2nd paragraph.

- ☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☐ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):
- Claims allowed: None
- Claims objected to: None
- Claims rejected: 18-28, 31-35, 39, and 40
- ☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Other

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DETAILED ACTION

1. Claims 18-28, 31-35, 39 and 40 are pending.
2. The period for reply continues to run 5 MONTHS from the date of the final rejection.
Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a) accompanied by the appropriate fee. The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. A reply within the meaning of 37 CFR 1.113 must be timely filed to avoid abandonment of this application.
3. The amendment filed 1/3/01 under 37 CFR 1.116 in reply to the final rejection will be entered upon the filing of an appeal, but is not deemed to place the application in condition for allowance. Upon the filing of an appeal and entry of the amendment, the status of the claims would be as follows:

Allowed claim(s): None

Rejected claim(s): 18-28, 31-35, 39 and 40

Claim(s) objected to: None

See 37 CFR 1.193(a)(2) which provides for the inclusion of the proposed rejection(s) detailed below in the Examiner's Answer if applicant elects to file an appeal to the Board of Patent Appeals and Interferences in this proceeding. To be complete, such rejection(s) must be addressed in any brief on appeal.

Upon appeal and entry of the amendment:

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Claims 18, 19, 21, 22, 25-28 and 31-35 would be rejected for the reasons set forth in the rejection under 35 U.S.C. 103 based upon Hamstra et al. in view of Nevalainen et al. and Jane et al. of the final Office action mailed 10/24/00.

Claim 20 would be rejected for the reasons set forth in the rejection under 35 U.S.C. 103 based upon Hamstra et al. in view of Nevalainen et al. and Jane et al. and further in view of Overton of the final Office action mailed 10/24/00.

Claim 24 would be rejected for the reasons set forth in the rejection under 35 U.S.C. 103 based upon Hamstra et al. in view of Nevalainen et al. and Jane et al. and further in view of Bedford et al. of the final Office action mailed 10/24/00.

Claims 23, 39 and 40 would be rejected for the reasons set forth in the rejection under 35 U.S.C. 103 based upon Hamstra et al. in view of Nevalainen et al. and Grabitz of the final Office action mailed 10/24/00.

4. Applicants argue that for the instant application, the activity for 1 FTU is equal to 1000 PU as FTU is measured in micromole of product per min as opposed to nanomole of product per min. Applicants argue that this provides an activity of phytase which is not disclosed by Nevalainen et al. Applicants also argue that Jane et al. teaches a cross-linked product which does not suggest that additional cross-linking will not take place and does not teach any composition that includes an active enzyme. Applicants argue that Grabitz does not remedy the failure of Nevalainen to disclose or suggest the claimed invention. Applicants further state that none of the

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cited references discloses, teaches or suggests a phytase-containing feed pellet having phytase activity of 14,000 FTU/g.


5. Applicant's arguments filed 1/3/01 have been fully considered but they are not persuasive. The level of phytase activity provided in the instant disclosure is acknowledged to be significantly greater than that of the prior art references (FTU vs PU). The Examiner agrees with Applicants that the prior art of record does not teach or suggest a phytase-containing feed pellet having phytase activity of 14,000 FTU/g. However, this is not made clear in the instant claims or in the instant disclosure. As claimed, 14,000 FTU/g is the concentration of phytase which to mixed with a solid carrier. This activity is not that of the final phytase containing granulate. As claimed, there is no indication that the phytase-containing granulates of the instant claims would be any different than any other phytase-containing granulate. The product by process claims 18 and 19 provide no indication as to the amount of phytase that would be found in the granulates. As such, the cited references would produce the same phytase-containing granulate. The instant claims have not provided any limitation that the phytase-containing granulates would contain phytase at a concentration significantly higher than what is known in the art. It is noted that the prior art of record does not appear to teach or suggest granulates containing phytase in the amounts disclosed. With regard to Jane et al., no evidence is provided to indicate that cross-linking will occur. As enzymes are proteins, one of ordinary skill in the art would recognize that the teaching by Jane et al. that proteins may be added to the cross-linked product would include the addition of enzymes.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Tung, Ph.D. whose telephone number is (703) 308-9436. The examiner can normally be reached on Monday-Friday from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy, Ph.D., can be reached on (703) 308-3804. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



PONNATHAPU ACHUTAMURTHY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600